



# **Legal Framework Advice Note**

**Sint Maarten - EU Status, Legal and  
Cooperation Framework**

# TABLE OF CONTENTS

Introduction and Snapshot	01
Overview	03
National Legal and Institutional Context	06
The Evolution of EU frameworks for OCTs	11
Treaty of Lisbon	13
Relationship with frameworks of the EU today	15
Conclusion	32
Recommendations	19
Links and Resources	20



**T**his advice note provides a comprehensive overview of the regulatory, legal, and institutional frameworks governing Sint Maarten, with particular attention to its unique position as a Dutch Overseas Country and Territory (OCT). As a constituent country within the Kingdom of the Netherlands, Sint Maarten enjoys substantial internal autonomy while maintaining shared responsibilities at the Kingdom level in areas such as foreign affairs, defense, and judicial oversight. Sint Maarten's legal framework, rooted in a civil law tradition adapted from Dutch law, must navigate an intricate web of international regulations. Notably, Sint Maarten's relationship with the European Union (EU) under the Overseas Countries and Territories (OCT) framework and the

Treaty of Lisbon introduces a layer of complexity. While the island is not part of the EU, it benefits from specific preferential arrangements, including in trade and development cooperation, but remains outside the EU's internal market. This unique positioning creates challenges in reconciling local laws with international obligations, especially with respect to AML/CFT frameworks and data protection standards.



# SNAPSHOT

Operating simultaneously within three overlapping legal spheres: local autonomy, Kingdom-level governance, and European Union association, Sint Maarten must comply with international standards such as those set by the Financial Action Task Force (FATF) and EU directives on data protection and anti-money laundering, without having full control over the institutions that represent it globally. For example, while Sint Maarten is required to address money laundering risks linked to sectors like tourism, casinos, and real estate, it faces challenges in ensuring effective enforcement due to gaps in institutional capacity. Similarly, while the General Data Protection Regulation (GDPR) does not automatically apply to the country, its extraterritorial reach means certain businesses and government agencies operating in Sint Maarten may still be required to comply, creating further

complexity for local businesses and policymakers.

The resulting legal landscape is one of flexibility but also of complex adaptation mechanisms—where Sint Maarten has the flexibility to tailor laws and policies to its context but also faces vulnerabilities in institutional enforcement and international cooperation. This situation demands continuous coordination across jurisdictions, creating both opportunities for innovation and challenges in accountability and legal coherence. As Sint Maarten navigates these complexities, it must balance its internal governance with its international commitments, especially in the critical areas of financial integrity and data protection.

# OVERVIEW

To support a clearer understanding of Sint Maarten’s complex legal, institutional, and international position, the table below summarizes the key elements addressed further in this advice note. It highlights the country’s governance structure, constitutional and EU relationships, regulatory challenges, and areas of strategic opportunity.

Sint Maarten is a Dutch Overseas Country and Territory (OCT) located in the northeastern Caribbean, sharing the island of Saint Martin with the French overseas collectivity of Saint-Martin. With an estimated population of 44,254 (2023), its economy is heavily reliant on tourism. The country is also particularly vulnerable to climate-related disasters and external economic shocks given its size, location and limited resources as a small island.

**"The island remains largely dependent on fossil fuels for energy, adding to its environmental and sustainability challenges."**

As part of the Kingdom of the Netherlands, Sint Maarten shares constitutional ties with three other constituent countries: Aruba, Curaçao, and the Netherlands. While all four countries are considered equal partners within the Kingdom, their legal and administrative arrangements differ. The Netherlands proper includes twelve European provinces as well as the Caribbean islands of Bonaire, Saba, and Sint Eustatius, which are classified as “bijzondere gemeenten” (special municipalities).



# OVERVIEW

Sint Maarten, along with Aruba and Curaçao, is designated as an Overseas Country and Territory (OCT) under Articles 198–204 of the Treaty on the Functioning of the European Union (TFEU). Although not part of the European Union, Sint Maarten maintains a special association with the EU, which provides for development assistance, preferential trade arrangements, and technical cooperation. However, OCTs are excluded from the EU’s internal market, customs union, and common policies, and do not participate in EU institutions.

Within this framework, Sint Maarten enjoys considerable internal autonomy, particularly in areas such as taxation, education, justice, and domestic legislation. However, foreign affairs, defense, final judicial review, and human rights standards are managed at the Kingdom level by the Netherlands as

detailed in the following chapter.

As a result, Sint Maarten operates in a unique legal and geopolitical space—autonomous yet constitutionally linked to a European state and formally associated with the EU without being a member.

TABLE 1: KEY HIGHLIGHTS

Policy Area	Key Features	Challenges / Notes
<b>Constitutional Status</b>	Constituent country of the Kingdom of the Netherlands; governed by the Charter for the Kingdom of the Netherlands	Autonomy in local matters; shared Kingdom-level responsibility for defense, foreign affairs, and nationality
<b>Legal System</b>	Civil law based on Dutch legal tradition; Supreme Court in The Hague is highest appellate authority	Functional legal dualism due to overlapping local, Kingdom, and EU frameworks
<b>EU Association (OCT status)</b>	Not part of the EU, but benefits from special association under Articles 198–204 TFEU	Excluded from internal market and EU law but eligible for funding and preferential trade
<b>Trade Framework</b>	Participates in <b>EU-CARIFORUM EPA</b> : regional trade preferences, cumulation of origin, regulatory cooperation	Facilitates access to EU markets; supports regional economic integration
<b>Overseas Association Decision (DOAG)</b>	EU support for resilience and sustainability: €7.7M for energy transition, cross-border cooperation with Saint-Martin	Key part of EU's Green Deal and Global Gateway strategies
<b>AML/CFT Framework</b>	National Ordinance on Reporting Unusual Transactions; Penal Code updated; FATF/CFATF member	Weak enforcement capacity; major backlog of unprocessed reports; high-risk sectors (casinos, real estate)
<b>Data Protection</b>	National Ordinance (2010); GDPR may apply extraterritorially (Article 3 GDPR)	No adequacy status; Data Protection Committee not fully functional; GDPR compliance encouraged
<b>International Commitments</b>	Bound by treaties extended via the Kingdom (e.g., Drug Convention, Terrorism Financing Convention, MLAT with the US)	UN Convention against Corruption <b>not</b> yet extended to Sint Maarten
<b>Institutional Capacity</b>	Structured governance via national ordinances; institutions like Ombudsman, Integrity Chamber	Enforcement and compliance gaps persist
<b>Vulnerable Sectors</b>	Tourism, casinos, real estate, harbor operations (trade-based laundering, smuggling)	Monitoring and oversight remain weak
<b>Environmental &amp; Energy Policy</b>	EU-funded projects: RESEMBID, Natural Capital Programme, Green Overseas; focus on sustainability and resilience	Fossil fuel dependency; vulnerable to climate shocks; cross-border environmental cooperation is key
<b>Judicial and Oversight Bodies</b>	Final appeals to the Dutch Supreme Court; FIU handles financial intel; pending Data Protection authority	Justice oversight resides in The Hague; limited local capacity to investigate complex financial crimes
<b>Legal Dualism</b>	Simultaneous obligations under local, Kingdom, and EU frameworks (EPA, FATF, GDPR, etc.)	Creates complexity in implementation, legal fragmentation, and coordination burdens

# National Legal and Institutional Context

Sint Maarten is governed by civil law rooted in Dutch legal tradition, though adapted locally. The **Supreme Court of the Netherlands** serves as the highest appellate court. The island has distinct corporate and civil frameworks compared to the European Netherlands but operates under shared judicial principles.

Sint Maarten exercises control over its internal affairs while deferring to the Kingdom of the Netherlands on matters like defense, foreign policy, and judicial oversight. Despite its attractive investment climate and robust tourism sector—anchored by casinos and real estate—Sint Maarten remains vulnerable to money laundering, primarily fueled by narcotics trafficking, trade-based schemes, and cross-border smuggling. The Caribbean Financial Action Task Force (CFATF) has in fact identified Sint Maarten as a jurisdiction with strategic weaknesses to combat money laundering and terrorist financing.<sup>1</sup>

The Charter for the Kingdom of the Netherlands (in Dutch: Statuut voor het Koninkrijk der Nederlanden) is a legal instrument that sets out the political relationship among the four countries that constitute the Kingdom of the Netherlands: Aruba, Curaçao, Sint Maarten in the Caribbean and the Netherlands (for the most part) in Europe. It is the leading legal document of the Kingdom. The Constitution of the Netherlands and the Basic Laws of the three other countries are legally subordinate to the Charter.

The four countries mentioned in the Charter are the Netherlands, Aruba, Curaçao, and Sint Maarten. The Charter stipulates that the Netherlands is governed according to the provisions of the Constitution for the Kingdom of the Netherlands and that Aruba, Curaçao and Sint Maarten are governed according to their respective Basic Laws.

The Charter states explicitly which elements of lawmaking and policy that involve Aruba, Curaçao and/or Sint Maarten are to be dealt with on the level of the Kingdom as a whole and are thus valid for all four countries. Any matter not explicitly mentioned to be an affair of the Kingdom that involves Aruba, Curaçao, and/or Sint Maarten is considered to be an affair of the different countries.

Responsibility for affairs of the Kingdom that involve Aruba, Curaçao and/or Sint Maarten rests with the Council of Ministers of the Kingdom. The affairs of the Kingdom are:

- maintenance of the independence and the defence of the Kingdom;
- foreign relations;
- Netherlands nationality;
- regulation of the orders of chivalry, the flag and the coat of arms of the Kingdom;
- regulation of the nationality of vessels and the standards required for the safety and navigation of seagoing vessels flying the flag of the Kingdom, with the exception of sailing ships;
- supervision of the general rules governing the admission and expulsion of Netherlands nationals and aliens;

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<sup>1</sup> As of the 2019 CFATF Public Statement (<https://www.fatf-gafi.org/en/countries/detail/Sint-Maarten-Kingdom-of-the-Netherlands.html>).

- extradition.<sup>2</sup>

Table 2 below presents an outline of Sint Maarten’s legal and institutional structure, showing that the country operates with a well-established constitutional foundation. Governed by its own constitution since the dissolution of the Netherlands Antilles, Sint Maarten has developed a legal framework that supports its autonomy as a constituent country within the Kingdom of the Netherlands.

The government and administrative structure is clearly defined, with national ordinances detailing the organization of ministries, the responsibilities of civil servants, and standards for financial accountability. The legislative process is structured and tiered, using national ordinances passed by Parliament, decrees issued by the Council of Ministers, and ministerial regulations to implement and enforce laws.






Accountability and integrity are emphasized through independent institutions like the Ombudsman and the Integrity Chamber, highlighting a commitment to transparency and good governance. The legal system extends into many aspects of public life, including civil and family law, child protection, and consumer rights, with ongoing development such as the upcoming Child Safety Code.





Security is another area of focus, with specific laws governing national security operations and screening for sensitive positions. Environmental regulation and urban planning are also part of the national legal agenda, reflecting attention to sustainability, safety, and quality of life. This includes regulations on building codes, fire safety, water management, and single-use plastics.

TABLE 2: OUTLINE OF NATIONAL REGULATORY FRAMEWORK

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<sup>2</sup> Article 3 of the Statute for the Kingdom of the Netherlands.

 Constitutional and Foundational Laws	<ul style="list-style-type: none"> <li>• Constitution of Sint Maarten (Staatsregeling van Sint Maarten) Establishes the country's constitutional framework and governance structure.</li> <li>• Kingdom Act Amending the Charter for the Kingdom of the Netherlands Facilitated the dissolution of the Netherlands Antilles and the establishment of Sint Maarten as a constituent country within the Kingdom.</li> <li>• National Ordinance on Transitional Legal and Administrative Provisions Ensures the continuity of applicable laws from the Netherlands Antilles and the Island Territory of Sint Maarten until amended or repealed.</li> </ul>
 Government and Administrative Structure	<ul style="list-style-type: none"> <li>• National Ordinance on the Design and Organization of the Government Defines the structure and responsibilities of various ministries and executive bodies.</li> <li>• National Ordinance on the Substantive Civil Servants Law Outlines the legal framework for civil servants, including employment conditions and rights.</li> <li>• National Accountability Ordinance Establishes standards for financial accountability and transparency within government operations.</li> </ul>
 Legislative Process and Legal Instruments	<ul style="list-style-type: none"> <li>• National Ordinances Laws enacted by the Parliament of Sint Maarten, often in collaboration with the Council of Ministers and the Council of Advice.</li> <li>• National Decrees Containing General Measures Regulations issued by the Council of Ministers on specific matters, which may require subsequent review by the Council of Advice.</li> <li>• Ministerial Regulations Detailed rules established by individual ministers to implement national ordinances or decrees.</li> </ul>
 Oversight and Integrity	<ul style="list-style-type: none"> <li>• National Ordinance on the Ombudsman Establishes the Ombudsman as an independent body to investigate complaints against government actions.</li> <li>• National Ordinance on the Integrity Chamber Creates an independent body tasked with promoting and enhancing integrity in the administration.</li> <li>• National Decree on the Integrity Chamber Details the organization, financial provisions, and appointment processes for the Integrity Chamber.</li> </ul>
 Civil and Family Law	<ul style="list-style-type: none"> <li>• National Ordinance on Inheritance and Donation Regulates matters related to inheritance, including wills, intestate succession, and donations.</li> </ul>

 National Security and Civil Service	<ul style="list-style-type: none"> <li>• National Ordinance on the National Security Service Defines the establishment, tasks, duties, and powers of the National Security Service (VDSM), along with provisions for an independent supervisory committee.</li> <li>• National Decree on Designating Positions of Confidentiality and the Execution of Security Screenings Regulates the designation of positions requiring confidentiality and the procedures for security screenings.</li> </ul>
 Urban Planning and Environmental Laws	<ul style="list-style-type: none"> <li>• Building Ordinance and Building Decree Set standards for construction, including safety, zoning, and environmental considerations.</li> <li>• Hindrance Ordinance and Hindrance Decree Address issues related to nuisances and disturbances affecting public order and safety.</li> <li>• Fire Safety and Prevention General Measures Establish guidelines and requirements for fire safety in buildings and public spaces.</li> <li>• Water Ordinances Regulate the management and conservation of water resources.</li> <li>• Single-Use Plastics Regulations Implement measures to reduce the use of single-use plastics in the territory.</li> </ul>
 Child Protection	<ul style="list-style-type: none"> <li>• Child Safety Code A forthcoming code aimed at ensuring the rapid detection of child abuse and improving coordination among relevant institutions.</li> </ul>
 Consumer Protection	<ul style="list-style-type: none"> <li>• Regulation on Price Indication of Goods and Services Mandates clear and visible pricing for goods and services to enhance consumer awareness and protection.</li> </ul>

## AML/CFT

As stated above, Sint Maarten's Anti-Money Laundering (AML) compliance has faced scrutiny, with the CFATF identifying strategic weaknesses in its fight against money laundering and terrorist financing. Sint Maarten has taken formal steps to build a framework for Anti-Money Laundering and Countering the Financing of Terrorism, but serious vulnerabilities persist—particularly in enforcement, institutional capacity, and political will.

### Key Mechanisms in Place:

- National Ordinance on Reporting Unusual Transactions requires reporting of unusual (not just suspicious) financial activities to the Financial Intelligence Unit (FIU).
- A new Penal Code has strengthened provisions against money laundering and terrorism financing.
- Sint Maarten is a member of the Caribbean Financial Action Task Force (CFATF) and is assessed according to FATF standards.

- The Kingdom’s obligations in AML/CFT under international treaties (e.g., UN Conventions, EU standards) are extended to Sint Maarten in theory.<sup>3</sup>

#### Persistent Weaknesses:

- Enforcement bottlenecks are critical. The 2023 backlog of 1,138 unprocessed reports (valued at \$243 million) at the Public Prosecutor’s Office reveals an institutional gap between detection and prosecution.<sup>4</sup>
- Political exposure and corruption risk remain high. Several high-profile cases (e.g., involving former MPs) indicate that AML violations often intersect with governance issues.<sup>5</sup>
- High-risk sectors such as real estate, casinos, online gaming, and port logistics are insufficiently regulated and monitored.
- The lack of a beneficial ownership registry—a FATF requirement—further limits transparency in company structures.<sup>6</sup>

#### Broader Implications:

- These weaknesses put Sint Maarten at risk of international reputational damage, which could threaten correspondent banking relationships and investment flows.
- AML/CFT compliance is not just a legal obligation but also a strategic requirement for participating in EU and international financial systems.

### Data Protection

While Sint Maarten has enacted a National Ordinance on the Protection of Personal Data (2010), its data protection landscape is still evolving and not yet fully aligned with EU-level standards, especially the General Data Protection Regulation (GDPR).

#### Current Legal Framework:

- The 2010 ordinance outlines rules on data processing, purpose limitation, consent, and data subject rights.
- The ordinance provides for the establishment of a Data Protection Supervisory Committee—but this body is not yet fully operational or resourced.
- There is no formal adequacy decision from the EU, meaning Sint Maarten is not automatically recognized as providing "adequate" protection under GDPR standards.

#### GDPR Relevance Despite Non-Application:

- Under Article 3 of the GDPR, the regulation can still apply to Sint Maarten-based entities if they:
  - Offer goods or services to individuals in the EU, or
  - Monitor EU individuals' behavior (e.g., via cookies or analytics).

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<sup>3</sup> The Kingdom’s AML/CFT obligations under international treaties are **formally applicable** to Sint Maarten once extended—but their **practical realization is conditional on local implementation**, which is often **delayed, uneven, or incomplete** due to local constraints (may they be administrative, political, etc.).

<sup>4</sup> See <https://stmaartennews.com/justice/law-enforcement-council-efforts-to-combat-money-laundering-are-insufficient/>.

<sup>5</sup> See the following news articles for additional information: <https://www.thedailyherald.sx/islands/former-mp-arrindell-sentenced-to-18-months-for-buying-votes> and <https://www.thedailyherald.sx/islands/appeals-court-comes-down-harder-on-former-mp-richardson-in-bribery-case>.

<sup>6</sup> FATF Guidance on Beneficial Ownership of Legal Persons can be found here <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html?>

- Companies in Sint Maarten processing data for EU-based organizations may also fall under GDPR as data processors.
- As such, GDPR compliance is recommended, especially for businesses in tourism, e-commerce, and digital services.

#### Challenges and Opportunities:

- There is currently no clear enforcement mechanism for data protection within the territory, creating risks for both citizens and businesses.
- Establishing an independent data protection authority would enhance regulatory credibility and support EU cooperation.
- Improving data governance will be essential not only for GDPR alignment, but also for digital economy development, trust-building, and cross-border data flows (especially with Saint-Martin, the French part of the island).

As a whole, Sint Maarten’s legal system offers a compelling case study in legal pluralism, where multiple legal authorities overlap in a single jurisdiction. As a constituent country of the Kingdom of the Netherlands and an OCT of the European Union, Sint Maarten is governed simultaneously by its own national legal order, the Charter for the Kingdom of the Netherlands, and the treaty-based frameworks of the EU. This results in a legal landscape that is both multi-layered and asymmetrical.

## The Evolution of EU frameworks for OCTs

OCTs are a group of territories that maintain special relationships with European Union (EU) Member States but are not considered part of the EU or its internal market. Linked primarily to France, the Netherlands, and Denmark, these territories are governed by a unique legal framework under Articles 198 to 204 of the Treaty on the Functioning of the European Union (TFEU). While OCTs benefit from preferential trade arrangements, financial support, and EU citizenship rights for their inhabitants, they retain a high degree of autonomy and are largely exempt from the direct application of EU law. This distinct status positions OCTs in a legal and political middle ground—formally outside the EU, yet deeply connected to it through various institutional, economic, and legal ties. Table 3 below lists OCTs associated with the EU providing some key information for each.

TABLE 3: OCTs ASSOCIATED WITH THE EU

OCT	Member State	Location	Capital	Surface Area (km <sup>2</sup> )	Population
<b>Anguilla</b>	United Kingdom	Caribbean	The Valley	91	<b>11.430</b>
<b>Aruba</b>	Netherlands	Caribbean	Oranjestad	180	<b>90.508</b>
<b>Bermuda</b>	United Kingdom	Atlantic	Hamilton	53	<b>62.059</b>
<b>Bonaire</b>	Netherlands	Caribbean	Kralendijk	288	<b>15.414</b>
<b>British Antarctic Territory</b>	United Kingdom	Antarctica	Rothera	1.709.400	<b>250</b>
<b>British Indian Ocean Territory</b>	United Kingdom	Indian Ocean	Diego Garcia	60	<b>4.000</b>
<b>British Virgin Islands</b>	United Kingdom	Caribbean	Road Town	153	<b>27.000</b>
<b>Cayman Islands</b>	United Kingdom	Caribbean	George Town	264	<b>60.456</b>
<b>Curaçao</b>	Netherlands	Caribbean	Willemstad	444	<b>142.180</b>
<b>Falkland Islands</b>	United Kingdom	Atlantic	Stanley	12.173	<b>3.140</b>
<b>French Polynesia</b>	France	Pacific Ocean	Papeete	4.167	<b>26.000</b>
<b>French Southern and Antarctic Territories</b>	France	Indian Ocean, Antarctica	Port-aux-Français	439.781	<b>140</b>
<b>Greenland</b>	Denmark	Arctic	Nuuk	2.166.0	<b>56.452</b>
<b>Mayotte</b>	France	Indian Ocean	Mamoudzou	374	<b>194.000</b>
<b>Montserrat</b>	United Kingdom	Caribbean	Plymouth (Brades)	102	<b>4.655</b>
<b>New Caledonia and Dependencies</b>	France	Pacific	Nouméa	18.575	<b>249.000</b>
<b>Pitcairn</b>	United Kingdom	Pacific	Adamstown	47	<b>50</b>
<b>Saba</b>	Netherlands	Caribbean	The Bottom	13	<b>2.000</b>
<b>Saint-Barthélemy</b>	France	Caribbean	Gustavia	25	<b>8.300</b>
<b>Saint Helena and Dependencies</b>	United Kingdom	Atlantic	Jamestown	122	<b>4.255</b>
<b>Saint-Pierre-et-Miquelon</b>	France	Atlantic	Saint-Pierre	242	<b>7.063</b>
<b>Sint Eustasius</b>	Netherlands	Caribbean	Oranjestad	21	<b>3.100</b>
<b>Sint Maarten</b>	Netherlands	Caribbean	Philipsburg	34	<b>71.000</b>
<b>South Georgia and South Sandwich Islands</b>	United Kingdom	Atlantic	King Edward Point	3.903	<b>30</b>
<b>Turks and Caicos Islands</b>	United Kingdom	West Indies	Cockburn Town	430	<b>36.605</b>
<b>Wallis and Futuna Islands</b>	France	Pacific	Mata-Utu	264	<b>15.289</b>

# The Treaty of Lisbon

The Treaty of Lisbon, which came into force in 2009, introduced important structural and conceptual changes to the legal framework governing the European Union's territorial scope, including its relationship with OCTs. One of Lisbon's central aims was to create a more coherent and unified legal order by merging the Treaty on European Union (TEU) and the Treaty establishing the European Community (now the Treaty on the Functioning of the European Union, or TFEU) into a single framework. This consolidation was intended not only as administrative streamlining but also as a move toward standardizing the application of EU law across all territories linked to Member States.

For OCTs, Lisbon retained and clarified their special status while also signaling a shift in the EU's broader territorial governance. Articles 198–204 TFEU replaced and updated the earlier provisions on OCTs, reaffirming the goal of promoting their economic and social development and strengthening their association with the Union. The Lisbon Treaty continued to treat OCTs as formally outside the EU's territorial scope, yet it reemphasized their special association status, which is characterized by asymmetric integration.

Several important developments stemmed from this shift:<sup>7</sup>

1. **Modernized Objectives**

**Articles 198–199 TFEU**

The Treaty of Lisbon redefined the purpose of the association between the EU and the OCTs. Article **198 TFEU** frames the objective as promoting the "economic and social development" of the OCTs and fostering "close economic relations between them and the Union as a whole." It replaces older colonial-era language with modern goals such as **sustainable development, poverty reduction, and integration into the global economy**, aligning the EU's approach with international development standards.

2. **Legal Clarification and Structural Reorganization**

**Articles 198–204 TFEU; Article 355(2) TFEU**

The Lisbon Treaty consolidated and clarified the OCT framework within **Part Four** of the TFEU (Articles **198–204**), providing a coherent and modernized legal basis for the relationship. Additionally, **Article 355(2) TFEU** defines the territorial scope of EU treaties and specifies that the provisions of Part Four apply to the OCTs listed in **Annex II** of the TFEU. This clarified that OCTs remain **formally outside the EU's territory** and internal market but governed by a dedicated legal regime.

3. **Strengthened Policy Dialogue and Institutional Framework**

**Article 203 TFEU**

Article **203 TFEU** authorizes the Council to adopt detailed rules for the OCT-EU association through the **Overseas Association Decision (OAD)**. This forms the legal foundation for periodic OADs (e.g. 2013/755/EU and 2021/1764/EU), which operationalize the association. These decisions provide OCTs with **enhanced opportunities for consultation**, participation

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<sup>7</sup> Text of the TFEU can be found here: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>. Relevant text for OCTs under Part IV of the Treaty.

in EU programs, and influence over cooperation priorities, notably in areas like **climate resilience, digital transition, and regional integration**.

4. **Acknowledgement of Differentiated Integration and Flexible Cooperation**  
**Articles 198, 203, 204 TFEU**

While the Treaty of Lisbon sought more consistent territorial governance, it simultaneously entrenched **differentiated integration** as a structural feature of EU law. The OCT framework exemplifies this. Articles **198** and **203 TFEU** allow for **customized cooperation** and participation in certain EU policies and programs on a **voluntary, negotiated basis**. This includes potential access to EU funding (e.g., via the European Development Fund or its successor instruments) and selective alignment with EU legislation or standards without full legal incorporation.

5. **Continuity of Constitutional Status—OCTs Remain Outside the EU**  
**Article 355(2) TFEU; Annex II TFEU**

Despite modernizing their legal relationship with the EU, Lisbon did not alter the **core constitutional status** of OCTs. Under **Article 355(2)**, OCTs remain **outside the territorial scope** of the EU Treaties, except as provided in Part Four. Their inclusion in **Annex II** confirms their categorization and links them explicitly to their respective Member States (France, Denmark, the Netherlands). Foreign affairs, defense, and sovereignty remain under the jurisdiction of the Member State, not the EU.

TABLE 4: SUMMARY TABLE OF ARTICLES MENTIONED

Policy Area / Development	Relevant Articles (TFEU)
<b>Objectives of OCT association</b>	Article 198, 199
<b>Territorial scope and legal definition</b>	Article 355(2), Annex II
<b>Legal framework for association</b>	Articles 198–204
<b>Decision-making and institutional setup (OAD)</b>	Article 203
<b>Participation in EU programs / Flexible integration</b>	Articles 198, 203, 204

Before the Treaty of Lisbon, EU treaties inadequately addressed the territorial diversity within the Union.<sup>8</sup> The Treaty of Lisbon did not overhaul the OCTs' legal status but rather refined and reinforced their distinctive model of association. It marked a shift toward a more partnership-based, development-oriented, and policy-specific framework. At the same time, Lisbon's aspiration for legal coherence across EU territories remained constrained by the entrenched diversity of territorial statuses, with OCTs continuing to occupy a uniquely hybrid legal and political space within the EU's architecture.

<sup>8</sup> Kochenov, D. *The Application of EU Law in the EU's Overseas Regions, Countries and Territories after the Entry into Force of the Treaty of Lisbon*. 2012.

# Relationship with frameworks of the EU today

Sint Maarten, as an OCT of the Kingdom of the Netherlands, is deeply connected to the European Union (EU) through a series of agreements and legal frameworks. These frameworks not only govern trade and investment but also extend into regulatory areas such as data protection, financial integrity, and cross-border cooperation. This chapter delves into Sint Maarten's engagement with the EU-CARIFORUM Economic Partnership Agreement (EPA), the General Data Protection Regulation (GDPR), and its broader international commitments, while also examining the regulatory challenges the territory faces in implementing these policies.

## *EU-CARIFORUM Economic Partnership Agreement (EPA)*

Sint Maarten benefits significantly from the EU-CARIFORUM Economic Partnership Agreement (EPA), a trade and cooperation pact between the EU and the Caribbean Forum (CARIFORUM), which includes both sovereign states and territories. This agreement facilitates trade by offering preferential access to EU markets, fostering regional cooperation, and integrating Sint Maarten into a broader Caribbean economic framework.

The EPA includes several provisions that directly benefit Sint Maarten:

- **Regional Trade Preferences:** The agreement establishes preferential trade terms for goods and services among CARIFORUM member states, and includes eleven Caribbean territories, such as Sint Maarten, with direct links to EU countries.
- **Cumulation of Origin:** This clause allows Sint Maarten to use raw materials from CARIFORUM countries, African, Caribbean, and Pacific (ACP) countries, and other EU trade partners to manufacture goods, which can then be exported to the EU with preferential tariffs.
- **Regulatory Cooperation and Integration:** The EPA promotes regulatory alignment between CARIFORUM countries and EU Overseas Territories in the Caribbean (OCTs), helping enhance the regional integration of Sint Maarten and its neighbors in areas such as customs procedures, environmental standards, and product certifications.

Through these provisions, Sint Maarten enjoys increased market access, the potential for enhanced investment, and opportunities for regional cooperation, particularly with neighboring territories like Saint-Martin.

## *Data Protection and the GDPR Implications*

Another area where Sint Maarten's relationship with the EU has significant implications is in the area of data protection. While Sint Maarten is not directly subject to the General Data Protection Regulation (GDPR), the extraterritorial application of the GDPR means that the island is still affected by it under certain circumstances.

- National Ordinance on Personal Data Protection: Sint Maarten has enacted its own National Ordinance on Personal Data Protection (2010), which governs the collection, processing, and storage of personal data. The island has also committed to establishing a Data Protection Supervisory Committee to enforce this ordinance and ensure compliance with international data protection standards.
- GDPR's Extraterritorial Reach: Although the GDPR does not automatically apply in Sint Maarten, it may still be relevant for businesses that:
  1. Offer goods or services to individuals in the EU, or
  2. Monitor the behavior of individuals within the EU (e.g., through online tracking or profiling).

In addition, the GDPR also applies to the transactions of some government agencies.

#### *EU's Overseas Association Decision (DOAG) and Development Support*

Sint Maarten's cooperation with the EU is further formalized through the Overseas Association Decision (DOAG), a framework adopted to guide the relationship between the EU and its Overseas Countries and Territories. Under this framework, Sint Maarten benefits from significant development support from the EU, focusing on sustainable development and regional integration.

- EU Financial Support: Under the DOAG, the EU has allocated €7.7 million to assist Sint Maarten in transitioning to sustainable and resilient energy systems. This funding is part of broader initiatives aimed at addressing climate change, promoting disaster preparedness, and fostering economic diversification.
- Regional Cooperation with Saint-Martin: The DOAG also encourages cross-border cooperation between Sint Maarten and its neighboring French territories, such as Saint-Martin, especially in areas like marine protection, waste management, and disaster resilience. This collaborative approach is crucial for addressing shared environmental challenges and improving regional governance.

Sint Maarten also benefits from other EU regional programs, including the RESEMBID and Natural Capital Programmes, which focus on enhancing resilience, sustainable energy, and biodiversity in Caribbean OCTs.

#### *Financial Integrity and Regulatory Framework*

Sint Maarten's financial integrity and compliance with international standards are paramount, particularly in light of its participation in global regulatory frameworks like the Caribbean Financial Action Task Force (CFATF) and adherence to Financial Action Task Force (FATF) standards.

- Money Laundering and Terrorism Financing: Sint Maarten has strengthened its legal framework in recent years, notably through the Penal Code (which came into effect on June 1), which bolsters measures to combat money laundering and terrorism financing. Additionally, the National Ordinance Reporting Unusual Transactions requires entities to report not only suspicious but also unusual financial transactions to the Financial Intelligence Unit (FIU), which is tasked with investigating such reports.
- Sectoral Vulnerabilities: Despite these advances, Sint Maarten faces significant vulnerabilities. The island does not operate an offshore banking sector, but sectors such as casinos, online gaming, and real estate development are still exposed to financial crime risks. The island's harbor—a critical regional hub for container traffic and cruise tourism—also presents opportunities for illicit activities like bulk cash smuggling and trade-based money laundering.

- **Enforcement Gaps:** A significant gap in enforcement remains a challenge, as indicated by a 2014 audit revealing weaknesses in institutional integrity. A backlog of unprocessed unusual transaction reports also signals gaps in enforcement capacity. This can undermine the effectiveness of anti-money laundering (AML) and counter-financing of terrorism (CFT) measures.

### *International Cooperation and Challenges*

Sint Maarten participates in a range of international treaties and agreements aimed at improving cooperation on issues like tax transparency, organized crime, and the financing of terrorism. These include:

- The 1988 Drug Convention
- The UN Convention against Transnational Organized Crime
- The UN Convention for the Suppression of the Financing of Terrorism

Additionally, Sint Maarten is covered by a Mutual Legal Assistance Treaty (MLAT) with the United States, enhancing its ability to address cross-border criminal issues.

However, Sint Maarten's international legal framework is not without gaps. For instance, the UN Convention against Corruption has not yet been extended to the territory, potentially limiting its ability to tackle corruption effectively in certain contexts.

Sint Maarten's relationship with the EU is multifaceted, encompassing trade agreements, data protection frameworks, financial integrity regulations, and international cooperation. While the EU-CARIFORUM EPA fosters regional trade and investment, the GDPR and local data protection laws highlight the extraterritorial challenges the island faces in meeting international standards. Additionally, Sint Maarten must navigate complex regulatory landscapes in financial integrity, particularly in addressing vulnerabilities in sectors like online gaming and real estate. Despite these challenges, EU support through initiatives like the DOAG and regional cooperation programs provides valuable resources for Sint Maarten's sustainable development and resilience in the face of climate change and economic pressures.

Sint Maarten finds itself navigating a uniquely complex legal and governance environment. As a constituent country of the Kingdom of the Netherlands and an OCT of the European Union, the island operates within overlapping legal systems. While this grants a degree of legislative and administrative autonomy, it also creates a fragmented and often contradictory legal landscape. This fragmentation is especially pronounced in key areas such as financial regulation, data protection, and compliance with international legal standards.

Despite the existence of a modern legal framework rooted in Dutch civil law, Sint Maarten struggles with limited institutional capacity, enforcement challenges, and

delayed implementation of key reforms. High-risk sectors—including real estate, tourism, and gaming—remain vulnerable to money laundering and financial misconduct due to inadequate oversight and political exposure. Data protection, though formally legislated, suffers from the lack of a fully functional regulatory authority and evolving compliance obligations under EU rules such as the GDPR.

At the international level, Sint Maarten's relationship with the EU is both beneficial and restrictive. While the territory enjoys access to EU development funds, trade preferences, and regional initiatives, it lacks a direct role in shaping many of the policies that affect it. The extraterritorial reach of EU and FATF regulations further complicates compliance without corresponding institutional support.

Environmental vulnerability and economic dependency on tourism compound these governance issues. EU-funded projects and cross-border cooperation offer promising pathways forward, but structural reform and greater institutional resilience are essential for long-term sustainability, legal coherence, and international credibility.

## Conclusion



# Recommendations

- **Strengthen Institutional Capacity and Enforcement**
  - o Enhance staffing and resourcing for key institutions such as the Financial Intelligence Unit (FIU), Public Prosecutor's Office, and supervisory authorities.
  - o Address enforcement backlogs and improve prosecutorial follow-through in AML/CFT cases.
- **Operationalize and Resource the Data Protection Authority**
  - o Fully establish the Data Protection Supervisory Committee and ensure it has the independence and capacity to enforce compliance with national and international standards.
- **Promote Data Protection and GDPR-Readiness in Key Sectors**
  - o Encourage key businesses and government agencies in digital services, e-commerce, and tourism to adopt data protection and data security practices through guidance, training, and incentives.
- **Improve Legislative Drafting and Policy Coordination**
  - o Create a centralized legislative drafting unit to harmonize laws across policy areas and support timely incorporation of international obligations.
- **Advance Accession to Key Treaties**
  - o Facilitate the extension of the key digital and other agreements .
- **Institutionalize Engagement in EU Policy Processes**
  - o Use the Overseas Association Decision (DOAG) mechanisms to advocate for structured participation in EU regulatory developments affecting OCTs.
- **Leverage EU Development Support for Strategic Reforms**
  - o Align EU funding (e.g., DOAG, RESEMBID) with institutional reform objectives such as energy transition, digital governance, and disaster preparedness.
- **Invest in Digital Infrastructure for Compliance and Transparency**
  - o Develop digital tools for AML reporting, beneficial ownership tracking, and administrative transparency to support accountability and cross-border cooperation.
- **Enhance Cross-Border Regulatory Coordination**
  - o Deepen cooperation with Saint-Martin and other regional partners on customs, environmental management, and data governance to address shared vulnerabilities.

# Links and Resources

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